

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RUBEN CASTILLO,

Plaintiff,

v.

**Civil Action No. 5:14cv46
(Judge Stamp)**

C.O. VANCE, Badge No. 160,

Defendant.

**REPORT AND RECOMMENDATION THAT APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES BE DENIED**

On April 9, 2014, the *pro se* plaintiff filed this civil rights action pursuant to 42 U.S.C. §1983, along with a Motion for Leave to Proceed *in forma pauperis* (“IFP”), together with a Prisoner Trust Account Report, ledger sheets, and a consent to collection of fees from trust account.

In his IFP affidavit, the plaintiff admits that he has a \$5,000.28 balance in a checking account at an outside bank; a house worth approximately \$80,000.00; and that he receives cash gifts of \$100.00 every two months from friends. Further, a review of the ledger sheets and certified copy of his inmate account statement reveals that while plaintiff only had an account balance of \$41.85 on April 15, 2014, the average monthly deposits into his trust account for the six months preceding the filing of his complaint were \$163.33. Consequently, the plaintiff has sufficient funds to pay the \$400.00 filing fee. Accordingly, the plaintiff’s request to proceed without prepayment of fees (Dkt.# 2) should be **DENIED**, and the plaintiff should be ordered to pay the full filing fee. The plaintiff should also be warned that the failure to pay the full filing fee within the time allowed by the Court will result in the dismissal of his complaint.

Within fourteen (14) days after being served with a copy of this Recommendation, **or by May 13, 2014**, the plaintiff may file with the Clerk of the Court written objections identifying

the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the United States District Judge. **Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation.** 28 U.S.C. §636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the *pro se* plaintiff by certified mail, return receipt requested, to his last known address as shown on his docket sheet.

DATED: April 29, 2014

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE